HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPSS No. 1557 of 2004

Dalip Singh
Vs
State of Uttaranchal
& others.

Approved for reporting.

_____
~~Not approved for reporting~~

Date of decision 23.08.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1557 (SS) OF 2004

Dalip Singh,
S/o Sri Amar Singh,
R/o Village Unana,
P.O. Hindolakhal,
Tehsil-Devprayag,
District-Tehri Garhwal. .....Petitioner.

Versus

1. State of Uttaranchal, through
   Director of Education, Dehradun.
2. Visheshyag Basic Shiksha Adhikari New Tehri,
   Tehri Garhwal.
3. Basic Shiksha Adhikari, Tehri Garhwal.
4. Adhyakash/Sachiv Gram Shiksha Samitee, Unana P.O Hindolakhal, Tehsil Devprayag, District-Tehri Garhwal.
5. Smt. Rekha Dangwal, W/o Sri Jayanti Prasad Dangwal, R/o Village Unana (Mayali), P.O. Hindolakhal, Tehsil – Devprayag, District-Tehri Garhwal.
6. District Magistrate, Tehri Garhwal.

.....Respondents.

Mr. S.N. Babulkar, Sr. Advocate, assisted by Mr. N.S. Pundir, Advocate for the petitioner.
Mr. Rakesh Thapliyal, Advocate for the respondent no.5.
Standing Counsel for the State.
Sri Siddarth Sah, Advocate for the respondent no.4.

&

WRIT PETITION NO. 565 (SS) OF 2004

Dalip Singh,
S/o Sri Amar Singh,
R/o Village Unana,
P.O. Hindolakhal,
Tehsil-Devprayag,
District-Tehri Garhwal. .....Petitioner.

Versus

1. State of Uttaranchal, through
   Director of Education, Dehradun.
2. Basic Shiksha Adhikari, Tehri Garhwal.
3. Adhyakash/Sachiv Gram Shiksha Samitee, Unana.
4. District Magistrate, Tehri Garhwal.
5. Smt. Rekha Dangwal, W/o Sri Jayanti Prasad Dangwal, R/o Village Unana (Mayali), P.O. Hindolakhal, Tehsil – Devprayag, District-Tehri Garhwal.

.....Respondents.

Mr. S.N. Babulkar, Sr. Advocate, assisted by Mr. N.S. Pundir, Advocate for the petitioner.
Mr. Siddarth Sah, Advocate for the respondent no.3.
Mr. Rakesh Thapliyal, Advocate for the respondent no.5.
Standing Counsel for the State.

Dated: 23.08.2006

Hon'ble Rajesh Tandon, J.

Heard counsel for both the parties.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 6th April, 2004 passed by the respondent no.1 (Annexure N. 12 to the writ petition).

3. A perusal of the order passed on 06.04.2004 shows that in pursuance of the order passed in Writ Petition No. 2003 to the following effect the Director of Education has decided the matter:-

"Jherh j[kk Mxoky d lrk"k tud f'k{kk fe= dk;dky dk nf"Vxr j[krs g, mUgs o"k 2003&2004 gsrq Hkh fu;eku lkj lfonk ij dk;jr j[krs g;s mUgs ekuns; Hkxrku fd;s tkus dh dk;okgh lfuf'pr dh tk;A

xkeh f'k{kk lfefr }kjk vfu;fer :i ls p;fur fd;s x;s vU; f'k{kk fe= ds p;u dh dk;okgh fu;eku lkj u gksus ds dkj.k fu"iHkkoh jgsxhA"

4. A perusal of the order of appointment shows that the work and conduct of Smt. Rekha Dangwal has been found to be satisfactory and the period of Smt. Rekha Dangwal has been extended from retrospective effect as 2003-2004. In the aforesaid order, it has also been mentioned that illegal appointment made by Gram Shiksha Samiti shall be inoperative.

5. In Writ Petition No. 1239 of 2003, the petitioner has challenged the advertisement dated 23rd July, 2006. Following prayer has been made in the aforesaid writ petition:-

"*(a) issue a writ, order or direction in the nature of certiorari quashing the advertisement dated 23.07.2003 (Annexure No. 6) issued by respondent no. 4 and the selection process drawn pursuant there to may also be quashed.*

(b) issue a writ, order or direction in the nature of mandamus directing to the respondent no. 4 to furnish the contract form pertaining to the petitioner forthwith to the Zila Basic Shiksha

Adhikari as directed by Zila Basic Shiksha Adhikari in its office letter dated 13.08.2003, 27.08.2003 and 15.09.2003 (Annexure no. 8 onwards to Annexure no. 10 to the writ petition).

(c) issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere in the peaceful functioning of the petitioner as Shiksha Mitra for the session 2-3-2004 and be paid salary month by month without any break.

(d) issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper on the basis of the facts and circumstances of the case.

(e) award the cost of the petition to the petitioner."

6. In the said writ petition, a copy of the order dated 15th September, 2003 (Annexure No. 10 to that writ petition) has been filed which shows to the following effect:-

"egkn;,

mi;qDr fo"k;d viu i=kd @1247@2003&04@f'k{kk fe=@ fnukd 29-8-03 dk voykdu dj tk xke f'k{kk lfefr }kjk u;s f'k{kk fe= ds p;u ds lEcU/k esa gSA bl lUnHkZ esa vkidk bl dk;kZy; ds i=kd @MhvkbZch@882&83@2003&04 }kjk ikoh esa voxr fd;k x;k Fkk fd ikoh dk;qjr f'k{kk fe= dk ugh gVk;k tk ldrk gS tcfd mldk dk;Z larks"tud u gkA ikoh dk;qjr f'k{kk fe= Jherh js[kk Mxoky dk i/kkuk?;kid ds mRd"B dk;Z izek.k i= ds vk/kkj ij mudk lfonk i= bl dk;kZy; }kjk vifkr Fkk fdUrq vkidk }kjk euekus <x ls u;s f'k{kk fe= dk p;u dj] fcuk bl dk;kZy; ds vuqeknu ds dk;ZHkkj xzg.k djok;k x;k gSA tks fd fu;eksa ds foijhr gSA bl dze esa bl dk;kZy; ds i=kd @1071&74@2003@&04 fnukd 27-8-2003 }kjk f'k{kk fe= dh foKfIr fujLr

dju dk vkn'k vkidk fd;k x;k FkkA vr% bl lUnHk esa ftykf/kdkjh egkn;] fVgjh x<+oky ub fVgjh dk vkn'k@fun'k fnukd 26-8-203 dk vuqikyu esa vkidk voxr djuk gS fd f'k{kk fe= Hkh nyhi flag dk vo/k p;u rRdky fujLr djrs gq,] mUgsa iBu ikBu ls jksd] ,oa iwo dk;jr f'k{kk fe= Jherh j[kk Mxoky dk lfonk ,= vl dk;kly; dk izfr"kr djs rkfd bugsa fu;eku lkj foHkkxh; izf'k{k.k fn;k tk ldsA"

7. In Writ Petition NO. 565 of 2004, the Director on the basis of the order passed in Writ Petition No. 1239 of 2003 has directed that any appointment, which has been made shall remain inoperative. In pursuance of the aforesaid order, the proceedings for recovery were started against the petitioner Sri Dalip Singh in Writ Petition No. 1557 of 2004 and Sri Dalip Singh has prayed in the writ petition to the following effect:-

"*(I) issue a writ, order or direction in the nature of certiorari quashing the impugned letter dated 18.12.2004 issued by respondent no. 4 and the letter dated 2.12.2004 issued by respondent no. 2.*

(II) issue a writ, order or direction in the nature of mandamus, commanding the respondent no. 2 and 4 not to make any recovery of the payment of honorarium paid to the petitioner by the respondent no.4.

(III) issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to allow the petitioner to continue to work as Shiksha Mitra in Basic School Unana.

(IV) Issue a suitable writ, order or direction, which this Court may deem fit and proper in view of Hon'ble the circumstances of the case.

(V) To award cost of present writ petition to favour of thee petitioner."

8. In the said writ petition, by the impugned order, the Basic Shiksha Adhikari has directed that the payment of honorarium is not possible to Sri Dalib Singh in pursuance of the order dated 6th April, 2004 passed by the Director of Education. Further the order has been passed for the recovery of the amount from him.

9. A counter affidavit has been filed, where in paragraph 8 in pursuance of the Government Order dated 26.05.1990, a committee has been formulated and the same has been operated by the Notification dated 1st July, 2000. The same is quoted below:-

"8. That the Shiksha Mitra Scheme was launched by the erstwhile State Government of U.P. and a Government Order dated 26.05.1999 was passed to that effect. True photocopy of the Government Order dated 26-05-1999 is being annexed herewith and marked as Annexure C.A. -1 to this affidavit. A perusal of the said Government Order reveals that for the smooth functioning of the said Scheme as well as for its implementation a Committee was constituted headed by the District Magistrate as the Chairman of the Committee and the other Members of the Committee were as follows:-

1. *District Magistrate Chairman.*
2. *Zila Panchyat Raj Adhikari Member*
3. *Account Officer of Basic Shiksha Adhikari Office Member*
4. *Zila Basic Shiksha Adhikari Member/Secretary.*

It is submitted that the said Government Order was followed by the Government Order dated 1st July, 2000."

10. So far as the appointment of the Shiksha Mitra is concerned, by the government order dated 1st July, 2000, power has been given under Rule 3, the same is quoted below:-

"3. xke f'k{kk lfefr }kjk f'k{kk fe= dk fpUgkdu dh ifdz;k%

ftyk Lrjh; lferh }kjk ;kstuk dk vkPNknu gksr fo|ky;ksa dk fpUgkdu gks tkus dk mijkUr lEcfU/kr xke f'k{kk lfefr viuh xke iapk;r dh iknf'kd lhek dk vUrxZr vofLFkr fo|ky; gksr f'k{kk fe= dh 0;oLFkk gksr iLrko ikfjr dj ;g fu.kZ; yxh fd lfefr lEcfU/kr fo|ky; e 'kklu }kjk fu/kkZfjr ekudksa dk vuqlkj f'k{kk fe= dh 0;oLFkk gksr lger gA

mi;qDr iLrko dk ikfjr gks tkus dk mijkUr xke f'k{kk lfefr f'k{kk fe= dh 0;oLFkk dk fy, bPNqd vH;fFkZ;ksa dk vkosnu i= vkeaf=r djus dh lkoZtfud lpuk xke iapk;r dk lpuk iVy rFkk xke iapk;r {ks= e vU; mi;qDr ek/;eksa ls izlkfjr djuxhA

lpuk dk izdk'ku@izlkj.k dh frfFk ls 10 fnu dh le;kof/k e bPNqd vH;fFkZ;ksa dk vkosnu i= xke iapk;r }kjk ikIr fd;s tk ldsxkA

xke f'k{kk lfefr }kjk ml xke iapk;r e ftldh iknf'kd lhek e fo|ky; vofLFkr gks dk fu/kkZfjr vgrk /kkjh vH;fFkZ;ksa dk gh vkosnu i= vkeaf=r djuxhA fo'ks"k ifjfLFkfr e ;fn fdlh xkso e vgS vH;FkhZ miyC/k u gks rks lEcfU/kr U;k; iapk;r e ls vgS vH;FkhZ fpUgkfdr fd;s tk ldsxkA

fufn"V vgrk@vf/kekuh vgrk ,oa vk;qDr lhek dk vuqlkj vkus okys vH;FkhZ f'k{kk fe= dks :i e f'k{k.k ls lEcfU/kr lkekftd dk;Z dk fy, viuh lsok;sa lyHk djk;s tkus gksr fufn"V &ik:Ik ,d e vkosnu i= viuh 'kSf{kd @if'k{k.k vgrk] vk;qDr ,oa tkfr lEcfU/k izek.k&i= dh lkFk iLrqr gksus Ldwy] b.VjehfM,V rFkk ch0,M0 @

,y0Vh0 ijh{kk dh vad rkfydk;a rFkk izek.k i= vfuok;Z :Ik ls izLrqr fd;s tk;xA\

xke f'k{kk lfefr }kjk vkonu i= izLrqr djus ds fy, fufnZ"V le;kof/k ijh gks tkus ds ¼10 fnu½ rjUr ckn vkonu i=ksa dk lE;d :Ik ls ijh{k.k ,oa mu ij fopkj gsrq viuh cSBd vkgwr dh tk;xhA f'k{kk lfefr lEcfU/kr vHk;fFkZ;ksa ds ewy izek.k i=ksa ls mudh vgZrk@vf/kekuh vgZrk rFkk vk; ds lEc/k esa lR;kiu lqfuf'pr djxA

f'k{kk fe= dks fpfUgr djus gsrq xke f'k{kk lfefr dh cSBd esa lnL;ksa dh nks frgkbZ mifLFkfr vfuok;Z gksxhA

lfefr gkbZLdwy] b.VjehfM,V rFkk ch0,M0@,y0Vh0 ijh{kk ds ikBzØekad d ifr'kr ds vkSlr vadksa ds vk/kj ij f'k{kk fe= ds p;u gsrq ik=rk lwph r;kj djxh rFkk lwph esa vf/kd vad ikIr djus okys vH;FkhZ dk uke igyh izeq[k ij vkj mlls de vad okys vH;FkhZ dk vojksgh dze esa lwphc} fd;k tk;xkA

fo|ky; esa dwy j[k tkus okys f'k{kk fe=ksa esa 50 ifr'kr efgyk gksxhA xke ipk;r vf/kfu;e ds vUrxZr tks xke ipk;r f'k{kk fe= ds fpUgksdu ds le; ifjlhek ds vuqlkj ftl :Ik esa oxhZd`r gks vFkkZr&lkekU;@vuqlfpr tkfr@ vU; fiNMk oxZ] ml ipk;r dh ikn~f'kd lhek esa vofLFkr ikFkfed fo|ky; esa ^f'k{kk fe=* ds :Ik esa izFke fjDr ij ifjlhek ds vuqlkj ;FkkfLFkfr mlh oxZ ds vH;FkhZ vFkkZRk lkekU;@vuqlfpr tkfr@ vU; fiNMk oxZ ds vH;FkhZ ds fy, vkfjf{kr gksxhA fufnZf"V ekud ds vuqlkj lEcfU/kr ikFkfed fo|ky; esa ;fn f'k{kk fe= ds :i esa nks vH;FkhZ fpfUgr gksrs gSa rks nwljh fjDr vukjf{kr gksxhA

f'k{kk lfefr ds LkHkkifr o lfpo ds fudV lEcU/kh dk p;u f'k{kk fe= :Ik ugha fd;k tk;xkA lEcfU/k;ksa dk rkRi;Z firk] nknk] Lo|j ¼firk ,oa ek= ek= lEcU/kh½ i=] ik=] nkekn] Hkkbz] cgu] ifr] iRuh] i=h rFkk ek ls gSA

,sl 0;fDr dk f'k{kk fe= d: lk e ugh j[kk tk;xk ftl dUnh; ljdkj vFkok jkT; ljdkj vFkok fdlh LFkkuh; ikf/kdkjh vFkok fdlh 'kf{kd lLFkku tks fd jkT; ljdkj l ekU;rk ikIr ,o lgk;frr g] fd lok l iFkd vFkok lokP;r dju dk n.M fn;k x;k gk fdlh vufrd dk;k e fyIr gkus d dkj.k ty dh lt dkV pdk gkA

f'k{kk lfefr mi;Dr lHkh fcUnvk d lc/k e viuk lek/kku dju ,o lcf/kr 0;fDr ftl f'k{kk fe= d: lk e lfefr }kjk j[kk tkuk iLrkfor gk] d pfj= ,o iotoRr dk lR;kiu lfpf'pr djxhA

f'k{kk lfefr }kjk mi;Dr ifd;k dk vulj.k djr g, fpfUgr f'k{kk fe= dk lEcfU/kr fo|ky; e ik:i nk d vulkj mudh lgefr ikIr dj f'k{k.k dk;l dh vuefr inku dh tk;xhA

11. So far as the duration of the Shiksha Mitra is concerned, the same is contained under Rule 5. The same is quoted below:-

"5. f'k{kk fe= dk dk;dky%&

f'k{kk fe= dk dk;dky lkekU;r;k fdlh f'k{kk l= e ekg eb d vfre fnol dk Lor% lekIr gk tk;xkA f'k{kk fe= d f'k{k.k dk;l ,o vkpj.k l lr"V gkus dh fLFkfr e lfefr }kjk vxy f'k{kk l= d fy, Hkh ml fpfUgr fd;k tk ldrk gA

fdlh Hkh f'k{kk fe= dk dk;l o vkpj.k lrk"k tud u gkus dh fn'kk e f'k{kk lfefr d nk frgkbl cgjer l fyf[kr iLrko ikfjr dj l= d e/; e Hkh lfefr dk fu.k; vfre gkxk vkj bl ikdj gVk;s x;s f'k{kk dk iu% bl :lk e dk;l dju dk volj ugh fd;k tk;xkA"

12. In view of the aforesaid, counsel for the petitioner has submitted that the Director of Education has neither any

power to extend the period of working, nor in any way has any power to enhance the period as the same automatically comes to an end in the last May of the every year and the power has been conferred under Rule 3 and 5.

13. On the footing of the aforesaid Rule 5, counsel for the petitioner has further submitted that in Writ Petition No. 1239 of 2003, by order dated 15th September, 2003, the Basic Shiksha Adhikari has no right to cancel the appointment unless and until the Shiksha Samiti has approved the same.

14. In view of the aforesaid, the matter is referred to the Committee as formulated by the Government Order dated 26th May, 1999 presided over by the District Magistrate as Chairman, who shall decide the dispute, within a period of six weeks from the date of presentation of the certified copy of this order, after hearing both the parties. The Committee shall also look to the record as to who is continuing as a Shiksha Mitra and further if the petitioner is found to have worked at any period of time, he shall be paid honorarium accordingly. However, till the dispute is decided, the recovery proceedings against the petitioner which has been challenged in Writ Petition No. 1557 (ss) of 2004 shall remain in abeyance. The decision of the Committee. Since the education is suffering therefore, the Committee is directed to expedite the matter.

15. Sri Siddharthe Sah, Advocate for the respondent no. 4 has also admitted this fact that the Committee formed in pursuance of the G.O. dated 26th May, 1999 is the appropriate authority for deciding the dispute between the parties.

16. While delivering the order in W.P. No. 1239 of 2003 (ss) on October 20, 2003 with regard to the formation of scheme for the appointment of Shiksha Mitra, I have relied upon the judgment of Apex Court in ***T.M.A. Pai Founcation Vs. State of Karnataka and others (2002) 8 SCC Page 481*** and ***Unni Krishan J.P. and others Vs. State of Andhra Pradesh and others (1993) 1 SCC 645.*** I have observed in W.P. No. 1239 (ss) of 2003 as under:-

"Taking into consideration the constitutional mandate as contained under Articles 21A, 41, 45 and 51A (k) the State of Uttaranchal has to fix the criteria for appointment of 'Shiksha Mitra' for carrying out the intention of the constitutional amendment for the education of children. Guidelines have also to be provided for the appointment of 'Shiksha Mitra'.

In the light of the aforesaid facts and circumstances the Director of Education, Uttaranchal is directed to consider the scheme afresh and codify the scheme in accordance with the constitutional mandate as contained under Article 21A, 41, 45 and 51A (k) of the Constitution of India.

Let a copy of this judgment be sent to the Chief Secretary, Uttaranchal for taking necessary steps in the light of observations made in the judgment."

17. The compliance of the aforesaid direction has not yet been made. The respondents are directed to codify the appointment of the Shiksha Mitra.

18. A writ of certiorari is issued quashed the order dated 06.04.2004 passed in Writ Petition NO. 565 (ss) of 2004.

19. Subject to the aforesaid, writ petitions are disposed of. No order as to costs. Let a copy of this judgment be sent to the Chief Secretary, Uttaranchal for taking necessary steps in the light of the observations made in the judgment.

(Rajesh Tandon, J.)

23.08.2006
Rathour